BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-3-E - ORDER NO. 2002-516

JULY 10, 2002

IN RE:	Duke Power – Annual Review of Base Rates for Fuel Costs	)	ORDER DENYING PETITION FOR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of Order No. 2002-401 in this Docket, filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Because of the reasoning stated below, the Petition is denied.

The first allegation of error by the Consumer Advocate is that we failed to make findings of fact supported by evidence of record on the issue of the appropriate proxy to be applied to Duke Power's (Duke's or the Company's) power purchases where a fuel cost is not known to determine the proper amount of fuel costs that could be recovered in this proceeding. According to the Consumer Advocate, this was the only contested issue in this case, and this Commission failed to address it in Order No. 2002-401. According to the Consumer Advocate, there is no finding as to whether a proxy is appropriate, and/or what level of proxy is approved. The Consumer Advocate states a belief that this omission violates S.C. Code Ann. Section 1-23-350 (1986). We disagree.

First, no witness presented any direct evidence whatsoever regarding the issue of a proxy for the fuel costs of purchased power. The matter was referred to only in the cross-examination of various witnesses by the Consumer Advocate, and certain exhibits

submitted by him on cross-examination. Whether this elevated the matter of the proxy for fuel costs of power purchases to a contested matter is highly questionable. The Consumer Advocate made no motion whatsoever, either during or at the end of the proceeding to place this matter squarely before us. He simply asked questions on cross-examination. Further, there is no violation of S. C. Code Ann. Section 1-23-350 (1986). That statute states that in part,... "If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." In this case, no such proposed findings of fact were submitted by the Consumer Advocate. Therefore, there were no proposed findings to be ruled upon. Even if this had not been the case, the Consumer Advocate simply presented no direct evidence on which we could base a ruling on this issue.

The Consumer Advocate asserts that the fuel factor approved by this Commission in Order No. 2002-401 allows Duke to recover a fuel cost for purchased power from power marketers and other suppliers where the fuel cost is not known, and that we were required to ensure that Duke fulfills its obligation to minimize fuel costs under S.C. Code Ann. Section 58-27-865 (F), and to enforce a separate requirement that only the fuel costs, as defined in S.C. Code Ann. Section 58-27-865(A), may be recovered in fuel proceedings. In the latter statute, "fuel cost" is defined as "the cost of fuel, fuel costs related to purchased power, and the cost of SO2 emission allowances as used and shall be reduced by the net proceeds of any sales of SO2 emission allowances by the utility." The Consumer Advocate states a belief that a 44% proxy factor should be applied to Duke's total energy cost of power purchases without an actual fuel cost. According to the

Consumer Advocate, the only alternative is to disallow all of the costs associated with power purchases that do not have an actual fuel cost. Any amount not recovered through the fuel clause could be recovered in the Company's next rate case, under the Consumer Advocate's theory. The Consumer Advocate then goes on to offer various other arguments to support his case.

The theory propounded that either a 44% proxy factor for fuel costs associated with purchased power should be allowed, or nothing should be allowed for these fuel costs is erroneous, illogical, and unsupported by the evidence in the case at bar. The Consumer Advocate asks this Commission to specifically adopt a proxy methodology adopted by the North Carolina Utilities Commission.

The reasoning in Order No. 2002-347 in Docket No. 2002-2-E, a South Carolina Electric & Gas Company (SCE&G) case, is instructive. In that Order, when faced with a similar request by the Consumer Advocate, this Commission adopted the reasoning propounded by Staff witness Randy Watts and Company witness Carl B. Klein. We take judicial notice of that decision and that reasoning, since that case was a fuel proceeding similar to the present one for an investor-owned electrical utility, and we believe that the principles espoused by us therein have general applicability to fuel cases such as the one at bar. Watts noted in that case that a proxy originating in another State may not be appropriate in South Carolina. As Watts also noted in that case, utilities have different operations, generation mix, and power requirements, which may show that one proxy is not necessarily appropriate for every occasion. Watts also stated that the present use of the generic 60% fuel proxy in North Carolina was based on a range of fuel cost to total

energy cost for off-system sales for the utility companies in that State included off-system sales for North Carolina Power, and was based on data from some period prior to August of 2001. The North Carolina level has also been variable, and, at one time, was set at 70%. Watts concluded, and we agreed, that the proxy methodology had many weaknesses and the factor methodology behind it has many weaknesses. Watts opined, and we agreed that continuation of the prior proxy methodology which the Commission Staff has been using, i.e., avoided cost, is the most appropriate and prudent, and is also consistent with the South Carolina Fuel Statute.

Klein stated in that case that avoidable cost in dollars per megawatt-hour is the standard energy pricing measure. SCE&G and other jurisdictional electrical utilities proposed to the Commission Staff that "fuel costs related to purchased power" be determined by comparing the cost to acquire and receive any potential purchase of power to serve its retail customers with the cost to produce that power.

Ultimately, we adopted the reasoning of Watts and Klein. We held that the avoidable cost fuel proxy is much more reasonable and appropriate that a specific percentage proxy when the precise amount of "fuel costs related to purchased power" cannot be determined. We held that "avoidable cost" is a standard energy pricing measure, used for many years to determine the rate that a utility pays for power, and that the avoidable cost proxy contributes to the Company's effort to minimize the total cost of providing service by encouraging the purchase of power at an amount less than that seen if the Company had to produce the power.

We also found in Order No. 2002-347 that the "avoidable cost" methodology most closely simulates the efficient operations of the Company's generating facilities by allowing for recovery of prudently incurred fuel costs at a level equivalent to the Company's avoided costs, and likewise disallowing purchased power costs in excess of this level. We discern no difference between the situation seen with SCE&G and that seen with Duke.

We hold that the same "avoidable cost" methodology used in the SCE&G case should be adopted in the Duke case. The Consumer Advocate has not shown any good cause for us to adopt any different methodology. The two utilities are both investor-owned utilities that generate, transmit, and distribute power under the jurisdiction of this Commission. The "avoidable cost" methodology is consistent with and does not change the amount allowed for fuel costs for purchased power in Order No. 2002-401. Further, the 44% proxy proposed by the Consumer Advocate was not raised in any direct testimony, nor was it raised in any cross-examination of any witness in this case, but appears for the first time in the Consumer Advocate's Petition for Reconsideration. It is simply not reasonable to propose a number for the first time in a post-hearing document. Nor is a figure of 47% elicited from an interrogatory response availing, without further explanation in the evidence, especially in the face of testimony from Company witness Young denying the reasonability of the number as a reasonable proxy. Staff witness Watts also noted that any percentage proxy may encourage a company to go ahead and run a plant to generate electricity, rather than purchasing cheaper power.

The Consumer Advocate's latest proposal in his Petition for Reconsideration appears to be arbitrary, capricious, and inconsistent with his past proposals. This can be easily discerned through examination of his positions and proposals in the three most recent fuel cost review hearings for Carolina Power & Light (Docket No. 2002-1-E), South Carolina Electric & Gas (Docket No. 2002-2-E), and this current Duke Power Docket. The Consumer Advocate has espoused no fewer than four (4) *different* positions on the same issue in these three proceedings. First, in March of 2002 in the Carolina Power & Light Company case he recommended use of the North Carolina Utilities Commission Marketer Stipulation methodology and corresponding proxy percentage of 60%, which was used in North Carolina for the three investor-owned utilities in that State. Next, in the South Carolina Electric & Gas Company proceeding in April of 2002, he recommended a modified North Carolina methodology proxy factor of 63%. Now, one month later in the present Duke Power Company case, he makes two more proposals and states that the only proxy that should be used is his 44% factor 'or' we should use no proxy at all. It is incredulous that all along he has promoted a proxy as being appropriate and consistent with the Fuel Statute, S.C. Code 58-27-865 (Supp. 2001), but now, and in a position completely opposite from his previous position, states that if we do not agree with his latest proposal, then no proxy at all is appropriate. Once again the Consumer Advocate fails to view the Fuel Statute in its entirety, and from his latest offering, has apparently made opposing interpretations of the Statute. On the one hand, he proffers a proxy for fuel costs related to purchased power, while on the other, he proclaims that

disallowing all the specifically unavailable fuel costs is also congruous with the Fuel Statute. This multitude of positions is perplexing as well as illogical.

In addition, the Consumer Advocate's assertion that there was no evidence to support any proxy other than his is simply not true. The evidence and testimony in the record, particularly cross-examination of witnesses Watts and Young, is replete with support for the continued use of the avoided cost methodology as well as discussions of the weaknesses of the other proxies alluded to by the Consumer Advocate. In addition, the testimony, report and exhibits filed by all the witnesses in this case are based upon and incorporate the use of the avoided cost methodology. Other than providing some exhibits and cross-examining witnesses, the Consumer Advocate offered no witness or testimony on his behalf and made no motion or recommendation for any specific finding during the course of the proceeding in this matter.

The Consumer Advocate simply cites nothing which would cause us to change our minds in this matter. Accordingly, the Petition is denied and dismissed.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director
(SEAL)